

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

In Re: Atrium Medical Corp., C-Qur Mesh Products Liability Litigation
MDL No. 2753

Civil Action No. 1:20-cv-00681
(Jury Trial Demanded)

SHORT FORM COMPLAINT

Come now the Plaintiff(s) named below, by and through their attorneys at Carey Danis & Lowe,
and for their Complaint against the Defendants named below, incorporate the Master Long Form
Complaint in MDL No. 2753 by reference. Plaintiff(s) further show the Court as follows:

1. Plaintiff

Donald Miller

2. Consortium Plaintiff

N/A

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator)

N/A

4. Current State of Residence

Maine

5. State of Residence at the Time of Implant (if different)

6. State of Residence at the Time of Explant (if applicable and different)

7. District Court and Division in which venue would be proper absent direct

filing District of Maine, Portland Division

8. Defendants (Check Defendants against whom Complaint is made):

- ☒ A. Atrium Medical Corporation (“Atrium”);
- ☒ B. Maquet Cardiovascular US Sales, LLC (“Maquet”);

☐

9. Basis of Subject Matter Jurisdiction

- ☒ Diversity of Citizenship

A. Paragraphs in Master Complaint upon which venue and jurisdiction lie:

Paragraphs 20, 21, 22, 23, 24, 25, and 26.

B. Other allegations of jurisdiction and venue:

10. Defendants’ products implanted in Plaintiff (Check products implanted in Plaintiff)

- ☐ A. C-QUR;
- ☐ B. C-QUR Mosaic;
- ☐ C. C-QUR Edge;
- ☐ D. C-QUR TacShield;
- ☐ E. C-QUR Lite Mesh V-Patch
- ☒ F. C-QUR Mesh V-Patch
- ☐ G. Other C-QUR mesh product

11. Defendants' Products about which Plaintiff is making a claim. (Check applicable products)

- ☒ A. C-QUR;
- ☐ B. C-QUR Mosaic;
- ☐ C. C-QUR Edge;
- ☐ D. C-QUR TacShield;
- ☐ E. C-QUR Lite Mesh V-Patch
- ☒ F. C-QUR Mesh V-Patch
- ☐ G. Other C-QUR mesh product;
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12. Date of Implantation as to Each Product

January 23, 2012

February 11, 2013

13. Date of Explant as to Each Product

December 11, 2018

14. Hospital(s) where Plaintiff was implanted (including City and State)

Maine Medical Center

Scarborough, Maine

15. Implanting Surgeon(s)

Dr. Leslie S. Wu, M.D.

16. Hospital(s) Where Plaintiff Had Explant (including City and State, if applicable)

Mid Coast Hospital

Brunswick, Maine

17. Explanting Surgeon(s)

Dr. Ira Bird, M.D.

18. Plaintiff alleges the following injury(ies) he or she suffered as a result of the implantation of the subject C-QUR mesh product.

Complications as a result of the implantation of the C-Qur implant, including chronic pain, inflammation, infection, adhesions, and related conditions, requiring surgical intervention, including revision and/or excision.

19. Counts in the Master Complaint brought by Plaintiff(s)

- ☒ Count I - Negligence
- ☒ Count II – Strict Liability – Design Defect
- ☒ Count III – Strict Liability – Manufacturing Defect
- ☒ Count IV – Strict Liability – Failure to Warn
- ☒ Count V – Strict Liability – Defective Product
- ☒ Count VI – Breach of Express Warranty
- ☒ Count VII – Breach of Implied Warranties of Merchantability and Fitness of Purpose
- ☒ Count VIII – Fraudulent Concealment
- ☒ Count IX – Constructive Fraud
- ☒ Count X – Discovery Rule, Tolling and Fraudulent Concealment
- ☒ Count XI – Negligent Misrepresentation

- ☒ Count XII – Negligent Infliction of Emotional Distress
- ☒ Count XIII – Violation of Consumer Protection Laws
- ☒ Count XIV – Gross Negligence
- ☒ Count XV – Unjust Enrichment
- ☐ Count XVI – Loss of Consortium
- ☒ Count XVII – Punitive or Enhanced Compensatory Damages
- ☐ Other _____ (please state the facts supporting this Count under applicable state law in the space immediately below)
- ☐ Other _____ (please state the facts supporting this Count under applicable state law in the space immediately below)

WHEREFORE, Plaintiff(s) demand(s) judgment against Defendants, and each of them, individually, jointly and severally and prays for the following relief in accordance with applicable law and equity:

- i. Compensatory damages to Plaintiff(s) for past, present, and future damages, including, but not limited to, pain and suffering for severe and permanent personal injuries sustained by Plaintiff(s), permanent impairment, mental pain and suffering, loss of enjoyment of life, past and future health and medical care costs, and economic damages including past and future lost earnings and/or earning capacity, together with interest and costs as provided by law;
- ii. Restitution and disgorgement of profits;

- iii. Punitive or enhanced compensatory damages;
- iv. Reasonable attorneys' fees as provided by law;
- v. The costs of these proceedings, including past and future cost of the suit incurred herein;
- vi. All ascertainable economic damages;
- vii. Survival damages (if applicable);
- viii. Wrongful death damages (if applicable);
- ix. Prejudgment interest on all damages as is allowed by law; and
- x. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff(s) hereby demand(s) a trial by jury on all issues so triable.

Dated: June 5, 2020

/s/ Andrew J. Cross

Jeffrey J. Lowe, #35114
Andrew J. Cross, #57337
Sarah Shoemake Doles, #45747
Alyson M. Petrick, #68323
CAREY DANIS & LOWE
8235 Forsyth Blvd., Ste. 1100
St. Louis, MO 63105
Telephone: (314) 725-7700
Facsimile: (314) 721-0905
jlowe@careydanis.com
across@careydanis.com
sdoles@careydanis.com
apetrick@careydanis.com

Attorney(s) for Plaintiff(s)